

TAFT, STETTINIUS & HOLLISTER

1800 FIRST NATIONAL BANK CENTER
CINCINNATI, OHIO 45202

513-381-2838

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TELECOPIERS:
513-381-0205
513-381-3363
513-381-4865

WASHINGTON, D. C. OFFICE
1620 EYE STREET, N. W.
WASHINGTON, D. C. 20006
202-785-1620

COLUMBUS, OHIO OFFICE
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614-221-2838

COVINGTON, KENTUCKY OFFICE
1717 DIXIE HIGHWAY, SUITE 340
COVINGTON, KENTUCKY 41011
606-331-2838
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M. MAYNARD HOLCOMBE, JR.
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MARK J. STEPANIAK
ANN OTTOSON KING*
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OF COUNSEL JOHN W. HUDSON
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ROBERT T. KEELER

* WASHINGTON, D. C. OFFICE
** COLUMBUS, OHIO OFFICE
*** COVINGTON, KENTUCKY OFFICE

OF COUNSEL WASHINGTON, D. C. ROBERT TAFT, JR.
JAMES D. WILLIAMS, JR.
BURTON R. THORMAN
RICHARD DEFELICE

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

January 21, 1988

Secretary
Interstate Commerce Commission
12th Street & Constitution Avenue, N.W.
Washington, D.C. 20423

Dear Secretary:

I have enclosed an original and one copy of the document described below, to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code.

This document is an Assignment, a secondary document dated December 30, 1987. The primary document to which this is connected is recorded under Recordation Number 8168.

We request that this Assignment be cross-indexed.

The names and addresses of the parties to this document are as follows:

Assignee: The David J. Joseph Company
300 Pike Street
Cincinnati, Ohio 45202

RECORDATION NO. 8168-12

JAN 26 1988 - 3 PM
INTERSTATE COMMERCE COMMISSION

LOG Washington, D. C.

January 21, 1988
Page Two

Assignor: TXL Properties Limited 85-103
One Embarcadero Center
San Francisco, California 94111

Lessee: Soo Line Railroad Company (successor
to Chicago, Milwaukee, St. Paul and
Pacific Railroad Company)
P. O. Box 530
Soo Line Building
Minneapolis, Minnesota 25357

A description of the equipment covered by the document follows:

220 100 ton low-side gondola cars identified by No. MILW 81000 through MILW 81184, inclusive, and MILW 92100 through MILW 92124, inclusive (and, as to 45 of the units in the series between MILW 81000 and MILW 81194, identified also as MILW 92130 through MILW 92159, inclusive, and MILW 92165 through MILW 92179, inclusive), and the lease proceeds thereof.

A fee of \$10.00 is enclosed. Please return the original and any extra copies not needed by the Commission for recordation to:

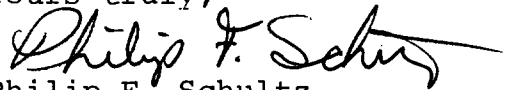
Philip F. Schultz, Esq.
Taft, Stettinius & Hollister
1800 First National Bank Center
Cincinnati, Ohio 45202

A short summary of the document to appear in the index follows:

Assignment between TXL Properties Limited 85-103, One Embarcadero Center, San Francisco, California 94111 and The David J. Joseph Company, 300 Pike Street, Cincinnati, Ohio 45202 dated December 30, 1987 and covering 220 100 ton low-side gondola cars, and connected to the Conditional Sale Agreement with Recordation No. 8168.

Please call me if you should have any questions.

Yours truly,


Philip F. Schultz
Attorney for
The David J. Joseph Company

PFS/ch
Encl.

Interstate Commerce Commission

Washington, D.C. 20423

OFFICE OF THE SECRETARY

Phillip F. Schultz
Taft, Stettinius & Hollister
1800 First National Bank Center
Cincinnati, Ohio 45202

Dear

Sir

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 3:05Pm at 1/26/88, and assigned recordation number(s). 8168-I

Sincerely yours,

Narta R. McEue

Secretary

Enclosure(s)

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OF COUNSEL: JOHN W. HUDSON
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LEONARD A. WEAKLEY
ROBERT TAFT, JR.
ROBERT T. KEELER

FEDERAL EXPRESS

February 2, 1988

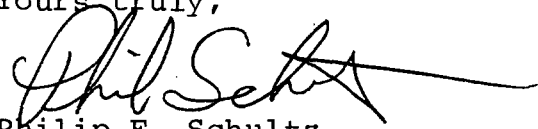
Mrs. Mildred Lee
Interstate Commerce Commission
Room 2303
12th & Constitution Avenue, N.W.
Washington, D.C. 20423

Dear Mrs. Lee:

As we discussed over the telephone today, your office inadvertently recorded original documents under Recordation Numbers 14792-A and 8168-I and returned the certified copies to me. Please file the enclosed certified copies of these documents in your records and return the original documents to me. I have enclosed a self-addressed Federal Express envelope for your convenience. You need only place the original documents in the envelope and place it in the Federal Express pick-up. The Federal Express charges will be billed to our account.

Please feel free to call me if you have any questions.

Yours truly,


Philip F. Schultz

PFS/ch
Enclosures

STATE OF NEW YORK

IN SENATE

January 10, 1907

REPORT OF THE

COMMISSIONER OF THE LAND OFFICE

IN RESPONSE TO A RESOLUTION

PASSED BY THE SENATE

ON JANUARY 1, 1906

ALBANY: PUBLISHED BY THE STATE PRINTING OFFICE, 1907.

RECEIVED BY THE COMMISSIONER OF THE LAND OFFICE

STATE OF NEW YORK
JANUARY 10, 1907
COMMISSIONER OF THE LAND OFFICE
ALBANY, N. Y.

ALBANY, N. Y.
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JANUARY 10, 1907
COMMISSIONER OF THE LAND OFFICE
ALBANY, N. Y.

RECEIVED BY THE COMMISSIONER OF THE LAND OFFICE

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ALBANY, N. Y.
JANUARY 10, 1907
COMMISSIONER OF THE LAND OFFICE
ALBANY, N. Y.

ASSIGNMENT OF LEASE

RECORDATION NO. 8168-I Filed 1425

JAN 26 1988 -3 05 PM

THIS ASSIGNMENT OF LEASE (the "Assignment") is made and entered into as of this 30th day of December, 1987, by and between The David J. Joseph Company, a Delaware corporation ("DJJ") and TXL Properties Limited 85-103, a California corporation ("T-103").

W I T N E S S E T H :

WHEREAS, T-103 and DJJ are parties to that certain Agreement for the Purchase and Sale of Gondolas dated as of December 30, 1987, as amended (the "Agreement");

WHEREAS, the Agreement provides, among other things, that T-103 will assign all of its right, title, interest and privileges in, to and under the Lease (as defined in the Agreement) to DJJ.

NOW, THEREFORE, in consideration of the mutual premises, covenants and conditions contained herein and in the Agreement, and of other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto, intending to be bound hereby, agree as follows:

1. Assignment. T-103, for valuable consideration paid to it by DJJ, hereby conveys, transfers and assigns to DJJ all the right, title, interest and privileges which T-103, as Lessor, has and may hereafter have in the Lease, or any part thereof, including, without limitation, all modifications, extensions and renewals of the Lease, and all guaranties thereof, together with all rents and other revenues due and to become due

on the date hereof and from that date forward.

2. Covenants. T-103 hereby represents, warrants and covenants as follows:

- (a) The Lease is in full force and effect, and, to the knowledge of T-103, there is no Event of Default (as defined in the Lease) continuing thereunder, or event or condition which, with the lapse of time or notice, or both, would become an Event of Default thereunder.
- (b) A true and correct copy of the Lease is attached hereto as Exhibit A and made a part hereof. The Lease has not been amended or modified, and neither T-103, nor any party acting on behalf of, or for the benefit of, T-103 has waived in any material respect any of the rights of T-103 thereunder or otherwise consented to any action or inaction by the Lessee under the Lease that would have been inconsistent with the terms of the Lease. All of the rights of Lessee in, to or with respect to the Gondolas, and all of the obligations of the lessor under the Lease to Lessee with respect to the Gondolas are set forth in the Lease.
- (c) T-103, as lessor under the Lease, has not failed in any material respect to perform any of its obligations under the Lease.
- (d) To the knowledge of T-103, no setoffs or other credits exist against any amounts to be paid by Lessee to the lessor pursuant to the Lease, and T-103 has not received payment of the Casualty Value (as defined in the Lease) with respect to any Gondola.
- (e) To the knowledge of T-103, none of the rights of the lessee under the Lease have been sublet or assigned to any party other than the Soo Line Railroad Company, which company has all of the rights and obligations under the Lease.

3. Capitalized Terms. Capitalized terms used herein

without definition shall have the meanings ascribed thereto in the Agreement.

4. Further Documentation. This Assignment, being further documentation of the sales, conveyances and assignments provided for in and by the Agreement, does not expand upon or limit the rights and obligations therein provided.

IN WITNESS WHEREOF, this instrument has been executed as of this 30th day of December, 1987.

Signed and acknowledged
in the presence of:

TXL PROPERTIES LIMITED 85-103

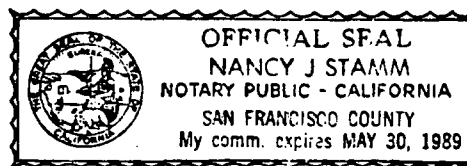
Linda Chuan


BY: Nancy J. Stamm

STATE OF California)
) SS:
COUNTY OF San Francisco)

The foregoing instrument was acknowledged before me this 19th day of January, 1988, by Nancy J. Stamm, the Vice President of TXL Properties Limited 85-103, a California corporation, on behalf of the corporation.

Nancy J. Stamm
Notary Public




- ATTACHMENT 1 -
to
Assignment of Lease -

RECORDATION NO. 8168-8 Filed & Recorded

DEC 31 1975 9 25 AM

INTERSTATE COMMERCE COMMISSION

LEASE OF RAILROAD EQUIPMENT

Dated as of December 1, 1975

BETWEEN

**CHICAGO, MILWAUKEE, ST. PAUL AND
PACIFIC RAILROAD COMPANY**

Lessee

AND

SCHOENFELD INVESTMENT CORPORATION

Lessor

LEASE OF RAILROAD EQUIPMENT dated as of December 1, 1975, between CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, a Wisconsin corporation (hereinafter called the Lessee), and SCHOENFELD INVESTMENT CORPORATION, a Washington corporation (hereinafter called the Lessor).

WHEREAS, the Lessor and the Lessee have entered into a Conditional Sale Agreement dated as of December 1, 1975 (hereinafter called the Security Document), with PULLMAN INCORPORATED (Pullman Standard Division) (hereinafter called the Builder), wherein the Builder has agreed to manufacture, sell and deliver to the Lessor the railroad equipment described in Schedule A hereto;

WHEREAS, the Builder has assigned or will assign its interests in the Security Document to SEATTLE-FIRST NATIONAL BANK, as Agent (hereinafter, together with its successors and assigns, referred to as the Vendor);

WHEREAS, the Lessee desires to lease all the units of said equipment, or such lesser number (hereinafter called the Units) as are delivered and accepted and settled for under the Security Document on or prior to December 31, 1975 (hereinafter called the Cut-Off Date), at the rentals and for the terms and upon the conditions hereinafter provided; and

WHEREAS, the Lessor will assign to the Vendor its right, title and interest in and to this Lease (except for amounts which may become payable pursuant to § 17 hereof) pursuant to a Collateral Assignment of Lease dated as of December 1, 1975 (hereinafter called the Collateral Assignment of Lease);

Now, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions, but, upon default of the Lessee hereunder or under the Security Document, subject to all the rights and remedies of the Vendor under the Security Document and the Collateral Assignment of Lease:

§ 1. *Incorporation of Model Provisions.* Whenever this Lease incorporates herein by reference, in whole or in part or as hereby amended, any provision of the document entitled "Model Lease Provisions" annexed to the Security Document as Part II of Annex C

thereto (hereinafter called the Model Lease Provisions), such provision of the Model Lease Provisions shall be deemed to be a part of this instrument as fully to all intents and purposes as though such provision had been set forth in full in this Lease.

§ 2. *Delivery and Acceptance of Units.* § 2 of the Model Lease Provisions is herein incorporated as § 2 hereof.

§ 3. *Rentals.* The Lessee agrees to pay to the Lessor as rental for each Unit subject to this Lease (i) for the period from and including the Closing Date (as defined in Article 4 of the Security Document) for such Unit to but not including January 1, 1976 an amount equal to 0.0382919% of the Purchase Price (as defined in the Security Document) for such Unit for each day elapsed from and including the Closing Date for settlement of such Unit to but not including January 1, 1976, payable on December 31, 1975, and (ii) through the balance of the Lease term remaining after the period described in (i) above, payable in 48 equal consecutive quarter annual installments on March 31, June 30, September 30 and December 31 in each year (or if any such date is not a business day, on the next preceding business day) commencing with March 31, 1976 (each such quarter annual rental payment date being herein called a "Payment Date"), an amount on each Payment Date equal to 3.446274% of the Purchase Price of each such Unit, subject to adjustment as provided in the second succeeding paragraph.

The quarter annual rental in the preceding paragraph of this §3 has been computed on the assumption that the unpaid principal balance of the Conditional Sale Indebtedness (as defined in the Security Document) will bear interest during the period ending on any Payment Date (the quarter annual period ending on any Payment Date being herein called a "Rental Period") at a rate of 10.5% per annum. The parties recognize that the Conditional Sale Indebtedness bears interest at a fluctuating interest rate which, during each Rental Period, is equal to 130% per annum of the rate of interest charged by Continental Illinois National Bank and Trust Company of Chicago for 90 day unsecured commercial loans to large corporate customers of the highest credit standing (hereinafter called "Continental's Prime Rate"), as in effect on the first day of such Rental Period.

If during any Rental Period for which a quarter annual rental payment is to be made, the amount of money to be paid on any Payment Date as interest on the Conditional Sale Indebtedness exceeds or is less

than the amount that would have been paid had such interest been computed at a rate of 10.5% per annum, then the amount of such excess shall be added to, or the amount of such difference shall be subtracted from (as the case may be), the amount of the quarter annual rental payment then due hereunder.

The Lessor irrevocably instructs the Lessee to make, and the Lessee agrees to make, all the payments provided for in this Lease in immediately available Seattle or Federal funds (including but not limited to the payments required under § 7 hereof) for the account of the Lessor, c/o Seattle-First National Bank, P. O. Box 24186, Seattle, Washington 98124 on or before 11 o'clock a. m. Seattle time on the date upon which payments are due and payable. Such payments shall be applied by the Vendor to satisfy the obligations of the Lessor under the Security Document due and payable on the date such payments are due hereunder and, so long as no event of default under the Security Document shall have occurred and be continuing, any balance shall be paid to the Lessor.

This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Lessor under this Lease or under the Security Document, or against the Builder or the Vendor or otherwise; nor except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency, bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may

now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever.

§ 4. *Term of Lease.* The term of this Lease as to each Unit shall begin on the date of the delivery to and acceptance by the Lessee of such Unit and, subject to the provisions of §§ 7, 10 and 13 hereof, shall terminate on the date on which the final quarter-annual payment of rent in respect thereof is due pursuant to § 3.

Notwithstanding anything to the contrary contained herein, all rights and obligations under this Lease and in and to the Units, upon default by the Lessee hereunder, or by Lessor or Lessee under the Security Document, are subject to the rights of the Vendor under the Security Document and the Collateral Assignment of Lease. If an event of default should occur under the Security Document, the Vendor may terminate this Lease (or rescind its termination), all as provided therein and in the Collateral Assignment of Lease, unless the Lessee is not so in default under this Lease or under the Security Document.

§ 5. *Identification Marks.* § 5 of the Model Lease Provisions is herein incorporated as part of § 5 hereof. The Lessee will perform, on behalf of Lessor, Lessor's undertakings set forth in the fifth paragraph of Article 15 of the Security Document.

§ 6. *Taxes.* § 6 of the Model Lease Provisions is herein incorporated as § 6 hereof except that the term "imposition" shall be deemed to include interest on any of the amounts set forth in the definition of the term "imposition" in said § 6.

§ 7. *Payment for Casualty Occurrences; Insurance.* In the event that any Unit shall be or become worn out, lost, stolen, destroyed, or, in the opinion of the Lessor or the Lessee, irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being hereinafter called Casualty Occurrences) during the term of this Lease, the Lessee shall promptly and fully notify the Lessor and the Vendor with respect thereto. On the rental payment date next succeeding such notice (and occurring not less

than 10 days after such notice), the Lessee shall pay to the Lessor the rental payment due and payable on such date plus a sum equal to the Casualty Value (as hereinafter defined) of such Unit as of the date of such payment in accordance with the schedule set out below. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and title to such Unit shall pass to the Lessee.

The Casualty Value of each Unit as of any rental payment date shall be that percentage of the Purchase Price of such Unit as is set forth in the following schedule opposite such rental payment date:

<u>Rental Payment Date*</u>	<u>Percentage</u>	<u>Rental Payment Date*</u>	<u>Percentage</u>
3/31/76 -----	109.9477%	3/31/82 -----	74.8161%
6/30/76 -----	110.6742	6/30/82 -----	73.1686
9/30/76 -----	110.4244	9/30/82 -----	71.4931
12/31/76 -----	110.4473	12/31/82 -----	69.7893
3/31/77 -----	110.3782	3/31/83 -----	61.3902
6/30/77 -----	110.2516	6/30/83 -----	59.6298
9/30/77 -----	110.0230	9/30/83 -----	57.8455
12/31/77 -----	109.5409	12/31/83 -----	56.0358
3/31/78 -----	108.9284	3/31/84 -----	54.2004
6/30/78 -----	108.2290	6/30/84 -----	52.3417
9/30/78 -----	107.3905	9/30/84 -----	50.4745
12/31/78 -----	106.4343	12/31/84 -----	48.5936
3/31/79 -----	98.6886	3/31/85 -----	46.6988
6/30/79 -----	97.5159	6/30/85 -----	44.7855
9/30/79 -----	96.2369	9/30/85 -----	42.8665
12/31/79 -----	94.9094	12/31/85 -----	40.9358
3/31/80 -----	93.5468	3/31/86 -----	38.9937
6/30/80 -----	92.1531	6/30/86 -----	37.0351
9/30/80 -----	90.7248	9/30/86 -----	35.0739
12/31/80 -----	89.2636	12/31/86 -----	33.1040
3/31/81 -----	81.1025	3/31/87 -----	31.1258
6/30/81 -----	79.5777	6/30/87 -----	29.1191
9/30/81 -----	78.0214	9/30/87 -----	27.0760
12/31/81 -----	76.4343	12/31/87 and thereafter -----	25.0000

* Or the preceding business day, in case any of the dates mentioned is not a business day.

Except as hereinabove in this § 7 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit after delivery to and acceptance thereof by the Lessee hereunder.

The Lessee will, at all times while this Lease is in effect, at its own expense, cause to be carried and maintained insurance in respect of the Units at the time subject hereto, and public liability insurance, in amounts and against risks customarily insured against by railroad companies on similar equipment, and in any event in amounts and against risks comparable to those insured against by the Lessee on equipment owned by it and the benefits thereof shall be payable as provided in the Security Document. Notwithstanding the foregoing, the Lessee will not maintain insurance in respect of the Units in excess of the Casualty Value thereof in the event that the Lessor elects to maintain such excess insurance, and Lessee will terminate any such excess insurance maintained by it within 30 days following notice by Lessor of its intention to maintain such excess insurance. Any insurance policies maintained by the Lessee under this § 7 shall name the Lessor and the Vendor as additional insureds and the Vendor as loss payee. Any net insurance proceeds as the result of insurance carried by the Lessee received by the Lessor in respect of Units suffering a Casualty Occurrence shall be deducted from the amounts payable by the Lessee to the Lessor in respect of Casualty Occurrences pursuant to this § 7. If the Lessor shall receive any such net insurance proceeds or condemnation payments after the Lessee shall have made payments pursuant to this § 7 without deduction for such net insurance proceeds or such condemnation payments, the Lessor shall pay such proceeds to the Lessee.

If the Lessee has elected to self insure the Units, the Lessor may, upon notice to the Lessee, maintain insurance in respect of the Units in such amount as it deems appropriate. The Lessor may elect to maintain insurance in respect of the Units in excess of the Casualty Value thereof even if the Lessee elects to insure the Units in an amount up to the Casualty Value thereof. The proceeds of any insurance maintained by the Lessor shall be for its own account and sole benefit and shall not affect, or operate as a discharge of, the obligation and liability of the Lessee to pay the Casualty Value of any Unit suffering a Casualty Occurrence. In the event that the Lessor has elected to maintain insurance in respect of the Units and Lessee thereafter notifies Lessor of its

intention to maintain insurance in respect of the Units, then, within 30 days following such notice, Lessor shall terminate the insurance maintained by it in respect of the Units in an amount up to the Casualty Value (but may continue any insurance in force in excess of Casualty Value).

§ 8. *Annual Reports.* § 8 of the Model Lease Provisions is herein incorporated as § 8 hereof.

§ 9. *Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; and Indemnification.* § 9 of the Model Lease Provisions is herein incorporated as § 9 hereof except that (i) the third paragraph of said § 9 is deemed to state "The Lessee agrees that, at its own cost and expense, it will maintain, service and repair each Unit so as to keep such Unit in as good an operating condition as when delivered to the Lessee hereunder, ordinary wear and tear excepted.", and (ii) the fourth paragraph of § 9 is deemed to state "Any and all additions to any Unit which are required for the operation or use of such Unit by the Interstate Commerce Commission, Department of Transportation, or any other applicable regulatory bodies, and any and all parts installed on and replacements made to any Units (which are required as aforesaid or pursuant to the preceding paragraph) shall constitute accessions to such Unit and, at the cost and expense of the Lessee, full ownership thereof free from any lien, charge, security interest or encumbrance (except for those created by the Security Document) shall immediately be vested in the Lessor and the Vendor as their respective interests appear in such Unit itself. The Lessee may also make additions to any Unit which are not required under the preceding provisions of this § 9 and the Lessee may remove such additions at the expiration of the original or any extended term of this Lease if the Lessee is then not in default under the terms of this Lease. Any such additions not removed shall become part of the Units and the property of the Lessor subject to the right of the Vendor under the Security Document and the Collateral Assignment of Lease."

§ 10. *Default.* If, during the continuance of this Lease, one or more of the following events (each such event being hereinafter sometimes called an Event of Default) shall occur:

A. default shall be made in payment of any part of the rental provided in § 3 hereof and such default shall continue for ten days;

B. the Lessee shall make or permit any unauthorized assignment or transfer of this Lease or of possession of the Units, or any thereof;

C. default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in the Security Document and such default shall continue for 25 days after written notice from the Lessor to the Lessee specifying the default and demanding that the same be remedied;

D. any proceedings shall be commenced by or against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder or under the Security Document under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extension (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder or under the Security Document), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease and under the Security Document shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Lessee or for the property of the Lessee in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

E. a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may hereafter be amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under the Security Document and this Lease shall not have been duly assumed in writing, pursuant to a court

order or decree, by a trustee or trustees appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

F. the Lessee shall not, within 30 days following the Closing Date, file the statement with the Interstate Commerce Commission required pursuant to 15 U.S.C. § 20 and 49 CFR § 1010.4 on account of the purchase by Continental Illinois National Bank and Trust Company of Chicago of interests in the Conditional Sale Indebtedness;

then, in any such case, the Lessor, at its option, may:

(a) proceed by appropriate court action or actions either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (i) as damages for loss of the bargain and not as a penalty, a sum, with respect to each Unit, which represents the excess of (x) the present value, at the time of such termination, of the entire unpaid balance of all rental for such Unit which would otherwise have accrued here-

under from the date of such termination to the end of the term of this Lease as to such Unit over (y) the then present value of the rentals which the Lessor reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on a basis of a rate of 6% per annum, discount, compounded quarter annually, from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, (ii) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant or covenants of this Lease other than for the payment of rental, and (iii) an amount equal to the Indemnity Amount set forth in § 17 hereof together with any and all assessments, charges, fines, penalties and interest in any way related thereto.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

§ 11. *Return of Units Upon Default.* § 11 of the Model Lease Provisions is herein incorporated as § 11 hereof except that the parenthetical phrase "(but, notwithstanding the foregoing provisions of this § 11, at the expense of the Lessor for any period in excess of 12 months)" shall be deemed to be inserted prior to the semi-colon appearing at the end of subsection (b) of said § 11.

§ 12. *Assignment; Possession and Use.* § 12 of the Model Lease Provisions is herein incorporated as § 12 hereof.

§ 13. *Purchase and Renewal Options.* Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Lessor not less than six months prior to the end of the original term of this Lease or any extended term hereof, as the case may be, elect (a) to extend the term of this Lease in respect of all, but not fewer than all, of such Units then covered by this Lease, for one additional five-year period commencing on the scheduled expiration of the original term of this Lease at a "Fair Market Rental" payable in 20 quarter-annual payments on March 31, June 30, September 30 and December 31 in each year, commencing March 31, 1988, of the extended term and (b) to purchase all, but not fewer than all, the Units covered by this Lease at the end of the original or the extended term of this Lease for a purchase price equal to the "Fair Market Value" of such Units as of the end of such term.

Fair Rental Value shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing lessee (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to lease and, in such determination, costs of removal from the location of current use shall not be a deduction from such value. If on or before four months prior to the expiration of the term of this Lease, the Lessor and the Lessee are unable to agree upon a determination of the Fair Rental Value of the Units, such value shall be determined in accordance with the foregoing definition by a qualified independent Appraiser. The term Appraiser shall mean such independent appraiser as the Lessor and the Lessee may mutually agree upon, or failing such agreement, a panel of three independent appraisers, one of whom shall be selected by the Lessor, the second by the Lessee and the third designated by the first two so selected. The Appraiser shall be instructed to make such determination within a period of 30 days following appointment, and shall promptly communicate such determination in writing to the Lessor and the Lessee. The determination so made shall be conclusively binding upon both Lessor and Lessee. The expenses and fees of the Appraiser shall be borne by the Lessee.

Fair Market Value shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing buyer-user (other than (i) a lessee currently in possession and (ii) a used equipment dealer) and

an informed and willing seller under no compulsion to sell and, in such determination, costs of removal from the location of current use shall not be a deduction from such value. If on or before four months prior to the expiration of the original term of this Lease, or in case of an extension thereof, of the extended term of this Lease, in the case of a purchase of the Units, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Value of the Units, such value shall be determined in accordance with the foregoing definition by a qualified independent Appraiser. The term Appraiser shall mean such independent appraiser as the Lessor and the Lessee may mutually agree upon, or failing such agreement, a panel of three independent appraisers, one of whom shall be selected by the Lessor, the second by the Lessee and the third designated by the first two so selected. The Appraiser shall be instructed to make such determination within a period of 30 days following appointment, and shall promptly communicate such determination in writing to the Lessor and the Lessee. The determination so made shall be conclusively binding upon both Lessor and Lessee. The expenses and fee of the Appraiser shall be borne by the Lessee.

Upon payment of the purchase price, the Lessor shall upon request of the Lessee execute and deliver to the Lessee, or to the Lessee's assignee or nominee, a bill of sale (without representations or warranties except that such Units are free and clear of all claims, liens, security interests and other encumbrances by or in favor of any person claiming by, through or under the Lessor) for such Units, and such other documents as may be required to release such Units from the terms and scope of this Lease and to transfer title thereto to the Lessee or such assignee or nominee, in such form as may reasonably be requested by the Lessee, all at the Lessee's expense.

§ 14. *Return of Units upon Expiration of Term.* § 14 of the Model Lease Provisions, with the exception of the last three sentences thereof, is herein incorporated as § 14 hereof.

§ 15. *Opinion of Counsel.* § 15 of the Model Lease Provisions is herein incorporated as part of § 15 hereof except that (i) each reference to the term "Security Document" in said § 15 shall also be deemed a reference to the term "Collateral Assignment of Lease" and (ii) the phrase "violate any existing law, rule or regulation applicable to the Lessee or" shall be deemed inserted, following the word "not", in the second

line of subsection E of said § 15. The opinion of counsel for the Lessee referred to in this § 15 shall also include opinions to the effect that (i) to the best of said counsel's knowledge (having made inquiry with respect thereto), there are no actions, suits or proceedings pending or threatened against or affecting the Lessee or the property of the Lessee in any court or before an arbitrator of any kind or before or by any governmental body which, if adversely determined, could materially affect the condition, financial or other, of the Lessee or the ability of the Lessee to perform its obligations under this Lease or the Security Document and (ii) no action or filing or registration or qualification with any governmental or public body or authority is or will be required to authorize, or is otherwise required in connection with, the valid execution, delivery or performance by the Lessee of this Lease, the Security Document (and the assignment thereof to the Vendor) and the Collateral Lease Assignment other than the filing of a statement with the Interstate Commerce Commission pursuant to 15 U.S.C. § 20 and 49 CFR § 1010.4.

§ 16. *Recording; Expenses.* § 16 of the Model Lease Provisions (with the exception of the last paragraph thereof) is herein incorporated as § 16 hereof. The Lessee agrees to pay the periodic fees and expenses of the Vendor for acting in its capacity as such under the agreements and instruments referred to in Article 20 of the Security Document.

§ 17. *Indemnity for Loss of ADR Deduction, Interest Deduction and Investment Credit.* The Lessor shall be entitled to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended, to the date hereof (herein called the "Code"), to an owner of property, including, without limitation, the maximum depreciation deduction with respect to the Units authorized under section 167 of the Code based on Lessor's Cost for the Units (meaning the Purchase Price of the Units) utilizing the twelve-year depreciable life prescribed for the Units in the Asset Guideline Class No. 00.25 in accordance with section 167(m) of the Code employing the double declining balance method of depreciation, switching to the sum-of-the-years-digits method when most beneficial to the Lessor, utilizing the half-year convention as provided in Treas. Regs. sec. 1.167(a)-11(c)(2)(iii) and taking into account an estimated gross salvage value of 20% of Lessor's Cost for the Units which will be reduced by 10% of Lessor's Cost for the Units as provided in section 167(f) of the

Code (such deduction being herein called the "ADR Deduction"), deductions with respect to interest payable on any certificate of interest pursuant to section 163 of the Code (such deduction being herein called the "Interest Deduction"), and the 10% investment credit in 1975 (herein called the "Investment Credit") with respect to Lessor's Cost for the Units pursuant to section 38 and related sections of the Code.

Lessee agrees that neither it nor any corporation controlled by it, in control of it, or under common control with it, directly or indirectly, will at any time take any action or file any returns or other documents inconsistent with the foregoing, and that each of such corporations will file such returns, take such actions and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent hereof. Lessee agrees to keep and make available for inspection and copying by the Lessor such records as will enable the Lessor to determine the extent to which it is entitled to the benefit of the Investment Credit and the ADR Deduction with respect to the Units.

Lessee represents and warrants that:

(i) the Units constitute property the Lessor's Cost for which qualifies for the Investment Credit under section 38 of the Code in 1975;

(ii) the Units constitute "new section 38 property" within the meaning of sections 46 and 48 of the Code and will not have been used by any person so as to preclude "the original use of such property" within the meaning of sections 48(b) and 167(c) (2) of the Code from commencing with the Lessor;

(iii) at all times during the term for the Units under this Lease, the Units will constitute "section 38 property" within the meaning of section 48(a) of the Code, and Lessee will not at any time during such term use or fail to use the Units in such a way as to disqualify them as "section 38 property" within the meaning of section 48(a) of the Code; and

(iv) Lessee will maintain sufficient records to verify such use, which records will be furnished to the Lessor within 30 days after receipt of a written demand therefor.

If for any reason (including without limitation a disposition following an Event of Default or attributable to a Casualty Occurrence,

an inaccuracy in law or in fact of the representations and warranties set forth in the preceding paragraph, or any act or omission of Lessee) other than a change in the Code subsequent to the Closing Date, the Lessor shall lose, or shall not have, or shall lose the right to claim, or shall suffer a disallowance of or shall be required to recapture all or any portion of the Investment Credit, the ADR Deduction, or the Interest Deduction with respect to any or all of the Units (any such loss, disallowance, or recapture being hereinafter called a "Loss"), then on the next succeeding Payment Date provided for in this Lease after written notice to Lessee by Lessor of such fact, Lessee shall forthwith pay to Lessor such amount or amounts (hereinafter called "Indemnity Amount") as shall, in the reasonable opinion of the Lessor, cause the Lessor's net return (calculated on the same basis as used by the Lessor in originally evaluating this transaction, a copy of which calculation has been furnished to Lessee by Lessor) to equal the net return that would have been realized by the Lessor if such Loss had not occurred, and Lessee shall forthwith pay to Lessor the amount of any interest and/or penalties which may be assessed by the United States of America or any other state or local government against the Lessor attributable to such Loss, such opinion of Lessor is subject to agreement by Lessee and, in the event of disagreement between Lessor and Lessee as to any such payment, Lessor and Lessee agree to submit the calculation of such amounts to Arthur Andersen & Co., which firm shall compute the calculation of such amounts based on the assumptions set forth in this § 17; *provided, however*, that such amounts shall not be payable if the Lessor shall have suffered such Loss with respect to the Units as a direct result of the occurrence of any of the following events:

(a) a Casualty Occurrence with respect to any or all of the Units if Lessee shall have paid the Casualty Value for the Unit pursuant to § 7 hereof;

(b) a voluntary transfer by the Lessor of legal title to any or all of the Units to anyone (not including any transfer pursuant to § 7 or 10 hereof) or a disposition by the Lessor of any interest in the Units or the voluntary reduction by the Lessor of its interest in the Rent for the Unit or Units, unless, in each case, an Event of Default shall have occurred and be continuing;

(c) the failure of the Lessor to claim in a timely manner the Investment Credit, the ADR Deduction or the Interest Deduction;

(d) the failure of the Lessor to have sufficient liability for Federal income tax against which to credit such Investment Credit or sufficient income to benefit from the ADR Deduction or the Interest Deduction, as applicable; or

(e) any other voluntary act or intentional failure to act by the Lessor, which directly results in the loss of the Investment Credit, the ADR Deduction or the Interest Deduction;

provided further that if any of the events described in subparagraphs (a) through (e) above shall occur with respect to less than all of the Units covered under this Lease, the non-payment provision of this paragraph shall extend to those Units only and the Lessee's obligations and liabilities hereunder shall continue with respect to all other Units.

The Lessor agrees that if, in the opinion of its or Lessee's independent tax counsel (herein referred to as "Counsel"), a bona fide claim to all or a portion of the ADR Deduction, the Investment Credit or the Interest Deduction on the Unit or Units exists in respect of which Lessee would otherwise be required to pay to the Lessor, pursuant to the next preceding paragraph, Indemnity Amount and amounts in respect of any interest and/or penalty, the Lessor shall upon request and at the expense of Lessee, take all such legal or other appropriate action deemed reasonable by either Counsel in order to sustain such claim; *provided, however*, that the Lessor shall not be obligated to take any such legal or other appropriate action unless Lessee shall first have indemnified the Lessor for all liabilities and expenses which may be entailed therein in a form satisfactory to the Lessor. The Lessor may, at its option, take such action prior to making payment of any tax and interest and/or penalty attributable to the disallowance or recapture with respect to the Lessor of all or any portion of the Investment Credit, the Interest Deduction or the ADR Deduction on the Units (hereinafter called a "Tax Payment") or may make such Tax Payment and then sue for a refund.

If the Lessor takes such action prior to making such Tax Payment, such Indemnity Amount and interest and penalties attributable thereto need not be paid by Lessee to the Lessor while such action is pending. In such case, if the final determination shall be adverse to the Lessor, the Indemnity Amount shall be computed by the Lessor as of the date of such final determination and Lessee shall make payment thereof on the Payment Date as provided for in the Lease next succeeding

such final determination and, on or before such Payment Date, Lessee shall pay to Lessor an amount equal to all interest and penalty paid by the Lessor in respect of such final determination, together (if Lessee, at its option, shall not have paid such interest and penalty to the Lessor on the date such payment is made by the Lessor) with interest thereon from the date such payment is made by the Lessor to the date Lessee makes payment therefor to Lessor, at a rate equal to 140% per annum of Continental's Prime Rate, as in effect on the date of such final determination.

If the Lessor makes such Tax Payment and then sues for a refund, such Indemnity Amount shall be payable by Lessee on the first Payment Date as provided for in the Lease after such Tax Payment is made and, on or before such Payment Date, Lessee shall pay to Lessor an amount equal to all interest and penalty paid by the Lessor included in such Tax Payment. In such case, if the final determination shall be in favor of the Lessor, on the Payment Date as provided for in the Lease next succeeding such final determination, Lessor shall pay to Lessee (i) an amount equal to the Indemnity Amount theretofore paid by Lessee to the Lessor, and distributed to Lessor (or a proportionate part thereof if the final determination is partly in favor of and partly adverse to the Lessor) with interest thereon at Continental's Prime Rate for the period commencing on the date such amounts were received by the Lessor to the date the Lessor pays to Lessee such amounts and (ii) the amount of any penalty or interest refunded to the Lessor as a result of such final determination and any interest paid to the Lessor by the government on such refund, promptly upon receipt thereof, and Lessee shall pay to Lessor (for the benefit of the Lessor) an amount equal to interest at Continental's Prime Rate on the amount of the tax refund made in respect of the Tax Payment (excluding any interest or penalty included therein) for the period from the date of the original payment of the Tax Payment by the Lessor to the date such tax refund is received by the Lessor, such Prime Rate to be calculated in either case as from time to time in effect during the respective periods.

In the event any payment is required to be made pursuant to the three next preceding paragraphs and such payment is to be made under the Lease on succeeding Payment Dates or on or before the next succeeding Payment Date, but at such time the Lease shall have been terminated or no longer in force and effect, each party required to make payment shall promptly pay all amounts otherwise payable and

not theretofore paid by it in respect of Indemnity Amount and interest and penalty (and interest thereon) calculated by reference to the actual applicable dates of final determination, Tax Payment and reimbursements pursuant to the three next preceding paragraphs.

§ 18. *Interest on Overdue Rentals.* Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, interest on the overdue rentals for the period of time during which they are overdue at a fluctuating interest rate equal to 140% per annum of Continental's Prime Rate (as in effect on the date the same become past due and subject to adjustment quarter annually) or such lesser amount as may be legally enforceable.

§ 19. *Notices.* Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when deposited in the United States certified mails, first-class postage prepaid, addressed as follows:

(a) if to the Lessor, at 676 South Industrial Way, Seattle, Washington 98108 Attn: Treasurer, Schoenfeld Corporation,

(b) if to the Lessee, at 516 West Jackson Boulevard, Chicago, Illinois 60606 Attn: Vice President—Finance and Accounting, Room 746,

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

§ 20. *Severability; Effect and Modification of Lease.* Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

This Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the Units and supersedes all other agreements, oral or written, with respect to the Units. No variation or modification of this Lease and no waiver of any of its provisions

or conditions shall be valid unless in writing and signed by duly authorized officers of the Lessor and the Lessee.

§ 21. *Execution.* This Lease may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument. Although this Lease is dated as of December 1, 1975, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

§ 22. *Law Governing.* The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Illinois, *provided, however*, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date first above written.

SCHOENFELD INVESTMENT
CORPORATION,

[CORPORATE SEAL]

By *Samuel I. Lough*
Title: Vice President

Attest:

Samuel Nelson
Secretary

CHICAGO, MILWAUKEE, ST. PAUL AND
PACIFIC RAILROAD COMPANY,

[CORPORATE SEAL]

By *R. K. Merrill*
Title: Vice President

Attest:

J. P. [illegible]
Assistant Secretary

STATE OF ILLINOIS }
COUNTY OF COOK } ss.:

On this 30th day of December, 1975, before me personally appeared IRWIN L. TREIGER, to me personally known, who, being by me duly sworn, says that he is a Vice President of SCHOENFELD INVESTMENT CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Susan M. Gorge
Notary Public

[NOTARIAL SEAL]

My Commission Expires ~~My Commission Expires~~ October 31st, 1979

STATE OF ILLINOIS }
COUNTY OF COOK } ss.:

On this 30th day of December, 1975, before me personally appeared *R. E. McCall*, to me personally known, who, being by me duly sworn, says that he is a ~~Vice President~~ of CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Susan M. Gorge
Notary Public

[NOTARIAL SEAL]

My Commission Expires ~~My Commission Expires~~ October 31st, 1979

**Schedule A
to Lease**

<u>Type</u>	<u>Builder's Specifications</u>	<u>Builder's Plant</u>	<u>Quantity</u>	<u>Lessee's Road Numbers (Both Inclusive)</u>	<u>Unit Base Price</u>	<u>Total Base Price</u>	<u>Estimated Time and Place of Delivery</u>
100 ton low side gondola car	No. 3258 dated January 17, 1974, as revised on August 28, 1974	Butler, Pennsylvania	220	MILW 81000-81194 and MILW 92100-92124	\$26,698.91	\$5,873,760.20	Dec. 1975 at Butler, Pa.